IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2449 of 2005

With

CIVIL APPLICATION No. 15096 of 2007

In

SPECIAL CIVIL APPLICATION No. 2449 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KUSHAL MANOJKUMAR VYAS & 1 - Petitioner(s)

Versus

COMMISSIONER OF PRIMARY EDUCATION & 2 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1 - 2.
MR DABHI, AGP for Respondent(s) : 1,
MR YV SHAH for Respondent(s) : 2,
MR MAHENDRA K PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/12/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel, Mr.Bundela for the petitioners, Mr.M.K.Patel for the contesting respondent No.3 and Mr.Dabhi, learned AGP for the State authorities, the matter is finally heard.

2. The petitioners have preferred the petition for appropriate writ to direct respondents No.1 and 2 to pay terminal benefits such as general provident fund, gratuity, leave encashment, and other terminal benefits of like nature to the petitioners. It appears that the petitioners No.1 and 2 are sons and respondent No.3 is the husband of deceased Damayantiben, daughter of Navinchandra Jethalal Thaker. As per the petitioners, since the deceased was suffering from cancer, she has executed a 'Will' before the Notary Public and the deceased and respondent No.3 had no good relations. In the nomination form, after marriage, the name of respondent No.3 was shown as nominee in the service record by the deceased, Damayantiben

(hereinafter referred to as 'deceased'). As the name of respondent No.3 was shown as the nominee and the petitioners were also claiming right in the terminal benefits in capacity as the sons of the deceased, the dispute arose. Consequently, the terminal benefits were not paid to the petitioners or to respondent No.3 and, therefore, the present petition.

3. It may be recorded that in the present proceedings initially when the notice was issued, interim injunction was granted restraining the respondent authority to make payment to respondent No.3. Thereafter on 22.2.2006 this Court (Coram: D.H. Waghela, J.), while admitting the petition, had ordered, subject to the final outcome of the petition and without prejudice to the rights and contentions of the party, by interim order, to disburse the amount of family pension to petitioner No.1 for himself as well as being guardian of petitioner No.2. Pursuant to the said order, the pension is being paid to petitioners No.1 and 2 uptil now.

4. It appears that thereafter the petitioners have applied before the Civil Court for getting probate based on the 'Will' of the deceased being Application No.3/2005 before the Civil Court at Patan. It appears that before the Civil Court at Patan, in view of certain declaration made by the parties the order dated 18.7.2007 was passed by the Civil Court, whereby it is ordered that the amount of Rs.6,45,473/- be paid to the petitioner No.1 and the order is also passed to direct the petitioner No.1 to file the affidavit that the education of the petitioner No.2, who is minor shall not be adversely affected on account of financial constraints. Pursuant to the said order passed by the Civil Court, the Civil Application No.15096 of 2007 has been preferred by the original petitioners seeking directions to release the amount of Rs.6,45,473/-. It has been also contended in the application that the petitioner No.2, who is minor is admitted in medical faculty and the fee is required to be paid for the MBBS Course in the medical college.

5. I have heard Mr.Bundela, learned Counsel appearing for the petitioners, Mr.M.K. Patel, learned Counsel for contesting respondent No.3, Mr.Y.V.Shah, learned Counsel for respondent No.2, and Mr.Dabhi, learned AGP for the State.

6. After some arguments, there were suggestions and counter suggestions and the learned Counsel for the respective parties, under the instructions of their clients, who are personally present in the Court, namely; Mr.Kushal Manojkumar Vyas, petitioner No.1 on behalf of the petitioners and Mr.Manojkumar R. Vyas, respondent No.3, are on agreement on the following aspects:-

(a) The retiral benefits of Rs.6,45,473/- be paid to petitioner No.1 for himself as well as for petitioner No.2, Tirth M. Vyas, who is minor and is being represented by petitioner No.1.

(b) The interim arrangement made by this Court for payment of pension to petitioner Nos.1 and 2 be modified and from

January 2008 onwards until the end of February 2013, 50% of the family pension of the deceased be disbursed to petitioner No.2 and respondent No.3 be paid remaining 50% of the family pension. As petitioner No.2 is minor and is to attain majority on 16th February, 2008 till the end of February, 2008 such amount of pension shall be paid to petitioner No.1 on behalf of petitioner No.2 in capacity as the guardian.

(c) Respondent No.3 is agreeable to withdraw all objections raised before the Civil Court in the proceedings of probate being Misc. Application No.3 of 2005 and shall not object the issuance of the probate by the Civil Court in accordance with law for the properties, which are mentioned in such proceedings. The appropriate declaration shall be filed by respondent No.3 on or before 31.1.2008.

(d) The amount of Rs.75,000/- already

paid to respondent No.3 towards Group Insurance shall not be claimed by the petitioners in the probate proceedings.

(e) After February 2013, the petitioners shall not claim any pension, nor shall be entitled to pension and from February 2013 onwards, full family pension of the deceased be paid to Respondent No.3 in accordance with law.

7. The learned Counsel appearing for both the sides, under the instructions of their clients, have also prayed that the petition may be disposed of in terms of the aforesaid agreement, and this Court may issue final direction in the petition based upon the aforesaid agreement.

8. It appears that the matter is pertaining to the family dispute amongst the petitioners and the respondent No.3 and with the intervention of both the Advocates, the matter is settled and both the sides have agreed to abide by the consent terms as referred to hereinabove. So far as the respondent authority is concerned, it

has no objection for payment of the retiral dues or pension in accordance with law, subject to the finalization of the eligibility amongst legal heirs, inter se, by this Court.

9. In view of the above, I find that the following directions shall meet with the ends of justice:-

(a) The retiral benefits of Rs.6,45,473/- shall be paid to petitioner No.1 for himself as well as for petitioner No.2, Tirth M. Vyas, who is minor and is being represented by petitioner No.1.

(b) The interim arrangement made by this Court for payment of pension to petitioner Nos.1 and 2 shall stand modified and from January 2008 onwards until the end of February 2013, 50% of the family pension of the deceased shall be disbursed to petitioner No.2 and respondent No.3 shall be paid remaining 50% of the family pension. As petitioner No.2 is minor and is to attain majority on 16th February, 2008 till the end

of February, 2008 such amount of pension shall be paid to petitioner No.1 on behalf of petitioner No.2 in capacity as the guardian.

(c) Respondent No.3 shall withdraw all objections raised before the Civil Court in the proceedings of probate being Misc. Application No.3 of 2005 and shall not object in issuance of the probate by the Civil Court in accordance with law for the properties, which are mentioned in such proceedings. The appropriate declaration shall be filed by respondent No.3 on or before 31.1.2008. The amount of Rs.75,000/- already paid to respondent No.3 towards Group Insurance shall not be claimed by the petitioners in the probate proceedings.

(d) After February 2013, the petitioners shall not claim any pension, nor shall be entitled to pension and from February 2013 onwards, full family pension of the deceased be paid to Respondent No.3

in accordance with law.

10. The aforesaid directions shall be complied with by the Respondents No.1 and 2, at least by 15th of January, 2008 for disbursement of the amount of retiral benefits of Rs.6,43,473/- and pension at the rate of 50% to petitioner No.1 and 50% to respondent No.3. Respondent No.3 shall also abide by the directions and make appropriate declaration before the Civil Court within the aforesaid stipulated period.

11. Either side shall be at liberty to move the Court, if the directions as per the agreement, are not complied with or either party has not acted as per the declaration and the directions.

12. The petition is partly allowed to the aforesaid extent. Rule made absolutely accordingly. No order as to costs.

13. In view of the order passed in the main Special Civil Application, the Civil Application shall stand disposed of accordingly.

18.12.2007 **(Jayant Patel, J.)**

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